Supreme Court, U.S.
FILED

041405 APR 12 2005

OFFICE OF THE CLERK

NO. _____

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2004

GARRY LEN BECKETT,

Petitioner,

VS.

THE STATE OF TEXAS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE TEXAS COURT OF CRIMINAL APPEALS

PETITION FOR A WRIT OF CERTIORARI

Barbara C. Crampton
CRAMPTON & CRAMPTON
505 Lamar Ave.
Wichita Falls, Texas 76301
(940) 723-9746 phone
(940) 322-5448 fax

QUESTIONS PRESENTED

I. WHETHER THE DEFENDANT'S RIGHT TO PRESENT A COMPLETE DEFENSE WAS VIOLATED WHEN THE DEFENDANT WAS NOT PERMITTED TO PROVE AT TRIAL THAT THE ALLEGED VICTIM WAS UNDER INVESTIGATION BY THE STATE ADULT PROTECTIVE SERVICES FOR THE CRIMINAL OFFENSE OF SEXUAL EXPLOITATION OF THE DEFENDANT AND THAT THE ALLEGED VICTIM WAS, AT THE TIME OF THE ALLEGED SEXUAL ASSAULT, FACED WITH THE PERCEIVED DANGER OF BEING CRIMINALLY PROSECUTED FOR FELONY SEXUAL EXPLOITATION AND PERMANENT LOSS OF HER MENTAL HEALTH JOB WITH THE STATE OF TEXAS.

II. WHETHER THE DEFENDANT'S RIGHT TO PRESENT A COMPLETE DEFENSE WAS VIOLATED WHEN THE DEFENDANT WAS NOT PERMITTED TO CALL OR CONDUCT DIRECT EXAMINATION OF THE ALLEGED VICTIM'S MOTHER WHOSE TESTIMONY INTRODUCED ON THE BILL OF EXCEPTION OFFER OF PROOF IMPEACHED THE VICTIM'S TESTIMONY AT TRIAL.

PARTIES TO THE PROCEEDING

The parties to this proceeding are:

Petitioner, Garry Len Beckett

Respondent, State of Texas

TABLE OF CONTENTS

QUESTIONS PRESENTED.....i

I. WHETHER THE DEFENDANT'S RIGHT TO PRESENT A COMPLETE DEFENSE WAS VIOLATED WHEN THE DEFENDANT WAS NOT PERMITTED TO PROVE AT TRIAL THAT THE ALLEGED VICTIM WAS UNDER INVESTIGATION BY THE STATE ADULT PROTECTIVE SERVICES FOR THE CRIMINAL OFFENSE OF SEXUAL EXPLOITATION OF THE DEFENDANT AND THAT THE ALLEGED VICTIM WAS, AT THE TIME OF THE ALLEGED SEXUAL ASSAULT, FACED WITH THE PERCEIVED DANGER OF BEING CRIMINALLY PROSECUTED FOR FELONY SEXUAL EXPLOITATION AND PERMANENT LOSS OF HER MENTAL HEALTH JOB WITH THE STATE OF TEXAS.

II. WHETHER THE DEFENDANT'S RIGHT TO PRESENT A COMPLETE DEFENSE WAS VIOLATED WHEN THE DEFENDANT WAS NOT PERMITTED TO CALL OR CONDUCT DIRECT EXAMINATION OF THE ALLEGED VICTIM'S MOTHER WHOSE TESTIMONY INTRODUCED ON THE BILL OF EXCEPTION OFFER OF PROOF

IMPEACHED THE VICTIM'S TESTIMONY AT TRIAL.

PARTIES TO THE PROCEEDING.....ii

TABLE OF CONTENTS.....iii

TABLE OF AUTHORITIES.....vii

PETITION FOR CERTIORARI.....1

OPINIONS BELOW 2

BASIS FOR JURISDICTION.....3

STATUTORY PROVISIONS INVOLVED.....4

STATEMENT OF THE CASE.....6

(1) STATEMENT OF FACTS.....6

(2) COURSE OF PROCEEDINGS AND DISPOSITION IN COURT BELOW.....10

(3) WHEN AND WHERE PETITIONER. RAISED FEDERAL QUESTIONS.....11

REASONS FOR GRANTING THE WRIT.....12

I. The Petitioner's right under the due process clause of the Fourteenth Amendment to

present a full and meaningful defense was violated in this case.

II. **The Petitioner's rights under the compulsory process or confrontation clauses of the Sixth Amendment were violated in this case.**

III. **Petitioner was denied the ability and opportunity to present a meaningful defense, which under the facts of this case, called for an exploration of the full relationship of the parties, defendant and alleged victim; the possible motives of the alleged victim; and the credibility of the alleged victim.**

ARGUMENT AND AUTHORITIES.....14

CONCLUSION.....18

APPENDIX

A. MEMORANDUM OPINION OF THE COURT OF APPEALS

B. ORDER DENYING THE "APPELLANT'S MOTION FOR REHEARING EN BANC"

C. "ORDER" OF THE TEXAS COURT OF CRIMINAL APPEALS REFUSING PETITION FOR DISCRETIONARY REVIEW

D. TEXT OF THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION

E. TEXT OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION

F. TEXT OF § 22.011 OF THE TEXAS PENAL CODE

TABLE OF AUTHORITIES

CASES

PAGE

Crane v. Kentucky, 476 U.S. 683 (1986).....17

United States v. Cronic, 466 U.S. 648 (1984).....18

Washington v. Texas, 388 U.S. 14 (1967).....18

STATUTES

Texas Penal Code § 22.011.....6, 7, 8

PETITION FOR A WRIT OF CERTIORARI

Petitioner herein respectfully prays that a writ of certiorari issue to review a final judgment of the Texas Court of Criminal Appeals entered in this action on January 12, 2005.

OPINIONS BELOW

The conviction in the trial court is not reported.

The decision of the Court of Appeals is not reported.

The decision of the Court of Criminal Appeals of Texas is not reported.

All appellate decisions are contained in the attached Appendix.

BASIS FOR JURISDICTION

The final judgment of the Texas Court of Criminal Appeals was entered on January 12, 2005. This Court has jurisdiction to review the final judgment of the Court of Criminal Appeals of Texas pursuant to 28 U.S.C. Section 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

Sixth Amendment to the United States Constitution:

"In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and caused of the accusation, to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

Applicable Portion of the Fourteenth Amendment to the United States Constitution:

"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person

within its jurisdiction the equal protection of the laws." (the full text of the Fourteenth Amendment is set out in the Appendix)

STATEMENT OF THE CASE

(i) STATEMENT OF FACTS.

For ease of identification the following will be used throughout this petition:

Petitioner will be called "Beckett".

Respondent will be called "the State."

The facts in this case are:

FACTUAL BACKGROUND GIVING RISE TO DEFENSE OF PENAL CODE § 22.011 TOGETHER WITH THE DEFENSE OF WHO WAS THE SEXUAL AGGRESSOR

This case began when Beckett was voluntarily admitted for approximately thirty days to the North Texas State Hospital in Wichita Falls for matters involving serious mental illness previously diagnosed and confirmed while at the North Texas State Hospital.

In spite of Texas Penal Code § 22.011 which provides as follows:

22.011

(a) A person commits an offense if the person:

(1) intentionally or knowingly:

(A) causes the penetration of the anus or sexual organ of another person by any means, without that person's consent;

(B) causes the penetration of the mouth of another person by the sexual organ of the actor, without that person's consent; or

(C) causes the sexual organ of another person without that person's consent, to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor, or

(b) A sexual assault under subsection (a)(1) is without the consent of the other person if:

. . . . .

(9) the actor is a mental health service provider or a health care services provider who causes the other person, who is a patient or former patient of the actor, to submit or participate by exploiting the other person's emotional dependency on the actor;

the alleged victim in this case, a mental health service provider at the mental health institution to which Defendant was admitted, struck up an immediate relationship with Beckett, became engaged to marry Beckett within days of his release from the State Hospital, engaged Beckett in a sexual relationship in violation of § 22.011, had been found culpable by Adult Protective Services and was potentially looking at the possibility of being charged with a second decree felony when the alleged bad conduct of Beckett occurred. It was only after the alleged victim was able to turn the investigation around as a result of the alleged sexual assault by Beckett that the alleged victim appealed the initial decision which was adverse to the

alleged victim and the initial decision on an administrative level was reversed in favor of the "victim." All of this evidence; involving the state of mind of both the alleged victim and Beckett; the issue of consent; together with any motive that the alleged victim might have had surrounding the circumstances that resulted in the bad conduct of Beckett were admissible in defense of the conduct of Beckett. However, all of this evidence and permitting the Defense to develop the defensive theory was denied to the defense by the trial court. The State filed a Motion in *Limine* in part directed towards conduct of the alleged victim. When the Defense requested to be heard in opposition to the State's Motion in *Limine*, the request was wholly denied by the trial court. Consequently the defense was not only not permitted to make a record at the beginning of the trial of what its defense was and why this evidence was admissible, but shortly thereafter when *voir dire* was being conducted the attempt of the defense to *voir dire* on

Texas Penal Code § 22.011 and whether the jurors approved of such a law, was totally denied to the defense.

Pursuant to Texas Rule of Evidence 412 such evidence would be admissible under two theories 1) consent of the victim; and/or 2) as it relates to the motive or bias of the alleged victim. In this case the trial court kept out the entirety of such evidence and cross examination of the alleged victim. Offers of proof and bills of exception were made relating to these exclusions. The Memorandum Opinion of the Court of Appeals found that this evidence was properly excluded as not "relevant."

FACTUAL BACKGROUND ON THE ISSUE OF DENIAL OF THE RIGHT TO CALL WITNESSES

The Defense called the alleged victim's mother to testify. Included in the bill of exceptions were areas of her testimony that impeached the credibility of the alleged victim.

The trial court wholesale excluded the entirety of her testimony elicited on the Bill of Exceptions.

(ii) COURSE OF PROCEEDINGS AND DISPOSITION IN COURT BELOW.

The case was tried to a jury on both guilt/innocence and punishment. Beckett was convicted of aggravated sexual assault for which he received a sentence of sixty-five years; aggravated robbery for which he received a sentence of five years; two counts of aggravated kidnapping for which he received a sentence of forty years on each count. Beckett was acquitted of burglary of a habitation.

The Court of Appeals rendered its Memorandum Opinion affirming the lower court on April 1, 2004.

The Court of Appeals overruled Beckett's Motion for Rehearing En Banc on June 24, 2004.

The Court of Criminal Appeals refused Beckett's Petition for Discretionary Review on January 12, 2005.

(iii) WHEN AND WHERE PETITIONER RAISED FEDERAL QUESTIONS:

The Petitioner's complaints regarding Question No. One in this Petition for Writ of Certiorari were raised at the trial court level, wherein the Petitioner's counsel made bills of exception regarding the excluded evidence and his theory of defense, and in his appeal to the Court of Appeals and as more fully set out in Beckett's Motion for Rehearing en Banc to the Court of Appeals and thereafter in Beckett's Petition for Discretionary Review made to the Texas Court of Criminal Appeals.

The Petitioner's complaints regarding Question No. Two were raised at trial court level wherein the Petitioner's counsel made a bill of exceptions regarding the excluded testimony, and while mentioned in the original brief, it was not assigned as a ground of error until the Motion for Rehearing en Banc filed with the Court of Appeals.

REASONS FOR GRANTING THE WRIT

I. **The Petitioner's right under the due process clause of the Fourteenth Amendment to present a full and meaningful defense was violated in this case.**

II. **The Petitioner's rights under the compulsory process or confrontation clauses of the Sixth Amendment were violated in this case.**

III. **Petitioner was denied the ability and opportunity to present a meaningful defense, which under the facts of this case, called for an exploration of the full relationship of the parties, defendant and alleged victim; the possible motives of the alleged victim; and the credibility of the alleged victim.**

ARGUMENT AND AUTHORITIES

In this case the defense believed that there was compelling evidence that the alleged victim was able to control the conduct of the defendant Petitioner. The defense presented the testimony of Dr. Leon Morris, a forensic psychologist, as to the serious mental health conditions with which the defendant had been diagnosed prior to the events in question. However when the defense attempted to have Dr. Morris explain why mental health related workers, psychologists and psychiatrists are forbidden to engage in sexual relationships with those persons whose care they are responsible for, the trial court intervened and precluded this area of testimony. The defense sought to put on the testimony of the Adult Protective Services investigator who had initially found that the defendant had been sexually exploited by the alleged victim, but the trial court denied this evidence and testimony. The defense was not allowed to put on evidence or testimony that would permit the

jury to know that prior to the alleged assault, the alleged victim was aware that Adult Protective Services was not only investigating the relationship and had issued a preliminary decision of reason to believe that sexual exploitation of the defendant Petitioner had occurred by the alleged victim, but in addition the defense was not permitted to put on evidence or testimony that the alleged victim was potentially facing a second degree felony charge and a permanent loss of her state job as a mental health services provider and that the alleged victim was fully aware of both of these adverse consequences of her behavior with the defendant Petitioner at the time that the incidents supporting the prosecution of the defendant occurred. The jury was left with the perception that the defendant Petitioner was a deeply disturbed person and dangerous to society without the ability of the defense to show that the alleged victim was the sexual aggressor, instigator and controller in the relationship and that the fact situation was

unique to the relationship created by the alleged victim in direct violation of Texas law. The issue of who was sexually exploiting whom in this fact situation was fundamental to an explanation of the defendant's conduct and was fundamental to an explanation of the defense identified at trial by defense counsel as to whom in the relationship was the instigator or aggressor or controller.

Also of significance was the impaired ability of the defense to call the alleged victim's mother as a witness and examine her as to what the alleged victim had told her had happened with regard to the incident in question, which testimony contradicted the trial testimony of the alleged victim. The trial court ruled that the alleged victim's mother could not be called as a witness by the defense.

This court has recognized that the defense has fundamental rights to put on its defense in a meaningful manner. Unfortunately the matter of sexual assault has given

rise to statutory limitations involving the sexual history of the victim. However, in this case the defense was not attempting to produce the alleged victim's sexual history except as it specifically related to the facts of this case.

The state objected on relevance grounds and the trial court and the Court of Appeals took the position that the exclusion of the evidence complained of was not "relevant" to the case, and it certainly was not relevant to the prosecution's case. It was however highly relevant to the defense's case. The defense is not required to defend at all, but once the defense chooses to defend, then the widest breadth at trial should be exercised in order the defense is able to be fully heard and able to fully develop its defensive theories.

As stated by Justice O'Connor speaking for a unanimous court in the case of *Crane v. Kentucky*, 476 U.S. 683, 690 (1986):

"That opportunity would be an empty one if the state were permitted to exclude competent, reliable evidence bearing on the credibility of a confession when such evidence is central to the defendant's claim of innocence. In the absence of any valid state justification, exclusion of this kind of exculpatory evidence deprives a defendant of the basic right to have the prosecutor's case encounter and 'survive the crucible of meaningful adversarial testing.' *United States v. Cronic*, 466 U.S. 648, 656 (1984). See also *Washington v. Texas, supra*, at 22-23."

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

Barbara C. Crampton
CRAMPTON & CRAMPTON
505 Lamar Avenue
Wichita Falls, Texas 76301
TELEPHONE: 940-723-9746
FAX PHONE: 940-322-5448

NO.

IN THE

SUPREME COURT OF THE UNITED STATES

GARRY LEN BECKETT,

Petitioner

V.

THE STATE OF TEXAS

Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO
THE TEXAS COURT OF CRIMINAL APPEALS

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

Barbara C. Crampton
Counsel of Record
CRAMPTON & CRAMPTON
505 Lamar Ave.
Wichita Falls, Texas 76301-2510
(940) 723-9746

COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH

NO. 2-02-450-CR

GARRY LEN BECKETT **APPELLANT**

V.

THE STATE OF TEXAS **STATE**

FROM THE 30TH DISTRICT COURT OF WICHITA COUNTY

MEMORANDUM OPINION

Garry Len Beckett appeals his convictions for aggravated sexual assault, aggravated robbery, and aggravated kidnapping. We will affirm.

The parties in this case are familiar with the relevant facts and the applicable law is well-settled.

In his first point, appellant contends that he was denied a

See Tex. R. App. P. 47.4.

fundamentally fair trial because the trial court improperly restricted his trial counsel's voir dire of the jury panel's opinions and attitudes on the issue of the victim's consent to the sexual assault. *See* TEX. PENAL CODE ANN § 22.011 (b)(9) (Vernon Supp. 2004) (sexual assault is without victim's consent if victim is patient or former patient of actor, and actor is mental health services provider or health care services provider who causes the person to submit or participate by exploiting the person's emotional dependency on the actor).

The trial court has broad discretion over the process of selecting a jury. *Barajas v. State*, 93 S.W.3d 36, 38 (Tex. Crim. App. 2002); *Allridge v. State*, 762 S.W.2d 146, 167 (Tex. Crim. App. 1988), *cert. denied*, 489 U.S. 1040 (1989). The propriety of a particular question is a matter for the trial court's discretion and will not be disturbed absent an abuse of discretion. *Barajas*, 93 S.W.3d at 38; *Allridge*, 762 S.W.2d at 167. A trial court's

BEST AVAILABLE COPY

discretion is abused only when a proper question about a proper area of injury is prohibited. *Barajas*, 93 S.W.3d at 38; *Allridge*, 762 S.W.2d at 163. A question is proper if it seeks to discover a juror's view on an issue applicable to the case. *Barahas*, 93 S.W.3d at 38; *Smith v. State*, 703 S.W.2d 641,643 (Tex. Crim. App. 1985). However, a voir dire question that is so vague or broad in nature as to constitute a global fishing expedition is not proper and may be prevented by the trial judge. *Barajas*, 93 S.W.3d at 39; *Smith*, 703 S.W.2d at 645.

Section 22.011 (b) (9) applies to cases where a mental health services provider or a health care services provider sexually assaults a patient or former patient. In this case, the former patient was the perpetrator of the assault, not the victim. Therefore, section 22.011 (b) (9) is inapplicable. Consequently, it was not an abuse of discretion for the trial court to refuse to allow appellant to question the jury panel about consent under

section 22.011 (b) (9). We overrule appellant's first point.

In his second point, appellant contends that he was denied a fundamentally fair trial when the trial court refused to allow him to introduce evidence of his prior relationship with the victim. The record shows that the trial court admitted evidence detailing the prior relationship between appellant and the victim. The only evidence about this relationship excluded by the trial court was evidence relating to an Adult Protective Services investigation. The investigator found that the victim had sexually exploited appellant because their intimate relationship began while he was a patient at the hospital; this finding was overturned on appeal. The State objected to the testimony on the grounds of relevance.

We apply an abuse of discretion standard in evaluating a trial court's ruling on the admissibility of evidence. *Miller v. State*, 36 S.W.3d 503, 507 (Tex. Crim. App. 2001); *Weatherred v. State*, 15 S.W.3d 540, 542 (Tex. Crim. App.

2000). Appellate courts must afford a trial court great discretion in its evidentiary decisions. *Montgomery v. State*, 810 S.W.2d 372, 378-79 (Tex. Crim. App. 1990). The trial court's ruling will be upheld if it was within the zone of reasonable disagreement. *Weatherred*, 15 S.W.3d at 542. In addition, we must review the trial court's ruling in light of what was before the court at the time the ruling was made. *Id.; Hoyos v. State*, 982 S.W.2d 419, 422 (Tex Crim. App. 1998). If the trial court's decision is correct on any applicable legal theory, it will be sustained. *Romero v. State*, 800 S.W.2d 539, 543 (Tex. Crim. App. 1990).

Evidence must satisfy two requirements to be considered relevant: materiality and probativeness. *Miller*, 36 S.W.3d at 507. For evidence to be material, it must be addressed to the proof of any fact that is of consequence to the determination of the action. To be probative, the evidence must tend to make the

existence of the fact more or less probable than it would be without the evidence. Tex. R. EVID. 401; *Miller*, 36 S.W.3d at 507.

Because the investigator's finding of a sexual exploitation was determined to be without merit, the trial court did not abuse its discretion by excluding the evidence relating to it on the ground that it was irrelevant. We overrule appellant's second point.

Having overruled both of appellant's points, we affirm the trial court's judgments.

/s/John Cayce

JOHN CAYCE
CHIEF JUSTICE

PANEL A: CAYCE, C. J., LIVINGSTON and WALKER, JJ.

DO NOT PUBLISH
Tex. R. App. P. 47.2 (b)

DELIVERED: April 1, 2004

COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH
NO. 2-02-450-CR

GARRY LEN BECKETT APPELLANT

V.

THE STATE OF TEXAS STATE

FROM THE 30TH DISTRICT COURT OF WICHITA COUNTY

ORDER

We have considered the "Appellant's Motion for Rehearing En Banc".

It is the opinion of the court that the en banc rehearing should be and is hereby denied and that the opinion and judgment of April 1, 2004, stand unchanged.

The clerk of this court is directed to transmit a copy of this order to the attorneys of record.

SIGNED June 24, 2004.

/s/ John Cayce
JOHN CAYCE
CHIEF JUSTICE

EN BANC

OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS
P.O. BOX 12308, CALPTOL STATION,
AUSTIN, TEXAS 78711

UNITED STATES POSTAGE

1/12/2005 **02 1A** **$00.23**

COA#: 02-02-00450-CR **004359722** **JAN 12 2005**

RE: Case No. PD-0658-04 **MAILED FROM ZIPCODE 78711**

STYLE: BECKETT, GARRY LEN

vs.

On this day, the Appellant's Petition for discretionary review has been refused.

Troy C. Bennett, Jr.

Holly Crampton

505 Lamar Ave

Wichita Falls, TX 76301

Sixth Amendment

In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Fourteenth Amendment

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof; are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life liberty, or property, without due process of law, nor deny any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for president and vice president of the United States, representatives in congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

Section 3. No person shall be a senator or representative in congress, or elector of president and vice president, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any

state, to support the constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But congress may by a vote of two-thirds of each house, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Penal Code § 22.011 Sexual Assault

(a) A person commits an offense if the person:

(1) intentionally or knowingly:

(A) causes the penetration of the anus or female sexual organ of another person by any means, without that person's consent;

(B) causes the penetration of the mouth of another person by the sexual organ of the actor, without that person's consent; or

(C) causes the sexual organ of another person, without that person's consent, to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor; or

(2) intentionally or knowingly:

(A) causes the penetration of the anus or sexual organ of a child by any means;

(B) causes the penetration of the mouth of a child by the sexual organ of the actor;

(C) causes the sexual organ of the child to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor;

(D) causes the anus of a child to contact the mouth, anus, or sexual organ of another person,

including the actor; or

(E) causes the mouth of a child to contact the anus or sexual organ of another person, including the actor.

(b) A sexual assault under Subsection (a)(1) is without the consent of the other person if:

(1) the actor compels the other person to submit or participate by the use of physical force or violence;

(2) the actor compels the other person to submit or participate by threatening to use force or violence against the other person, and the other person believes that the actor has the present ability to execute the threat;

(3) the other person has not consented and the actor knows the other person is unconscious or physically unable to resist;

(4) the actor knows that as a result of mental disease or defect the other person is at the time of the sexual assault incapable either of appraising the nature of the act or of resisting it;

(5) the other person has not consented and the actor knows the other person is unaware that the sexual assault is occurring;

(6) the actor has intentionally impaired the other person's power to appraise or control the other person's conduct by administering any substance

without the other person's knowledge;

(7) the actor compels the other person to submit or participate by threatening to use force or violence against any person, and the other person believes that the actor has the ability to execute the threat;

(8) the actor is a public servant who coerces the other person to submit or participate;

(9) the actor is a mental health services provider or health care services provider who causes the other person, who is a patient or former patient of the actor, to submit or participate by exploiting the other person's emotional dependency on the actor;

(10) the actor is a clergyman who causes the other person to submit or participate by exploiting the other person's emotional dependency on the clergyman in the clergyman's professional character as spiritual adviser;

(c) In this section:

(1) "Child" means a person younger than 17 years of age who is not the spouse of the actor.

(2) "Spouse" means a person who is legally married to another.

(3) "Health care services provider" means:

(A) a physician licensed under Subtitle B, Title 3, Occupations Code;

(B) a chiropractor licensed under Chapter 201, Occupations Code;

(C) a physical therapist licensed under Chapter 453, Occupations Code;

(D) a physician assistant licensed under Chapter 204, Occupations Code;

(E) a registered nurse, a vocational nurse or an advanced practice nurse licensed under Chapter 301, Occupations Code.

(4) "Mental health services provider" means an individual, licensed or unlicensed, who performs or purports to perform mental health services, including a:

(A) licensed social worker as defined by Section 505.002, Occupations Code;

(B) chemical dependency counselor as defined by Section 504.001, Occupations Code;

(C) licensed professional counselor as defined by Section 503.002, Occupations Code;

(D) licensed marriage and family therapist as defined by Section 502.002, Occupations Code;

(E) member of the clergy;

(F) psychologist offering psychological services as defined by Section 501.003, Occupations Code;

(G) special officer for mental health assignment certified under Section 1701.404, Occupations Code;

(d) It is a defense to prosecute under Subsection (a)(2) that the conduct consisted of medical care for the child and did not include any contact between the anus or sexual organ of the child and the mouth, anus or sexual organ of the actor or a third party.

(e) It is an affirmative defense to prosecute under Subsection (a)(2) that:

(1) the actor was not more than three years older than the victim and at the time of the offense:

(A) was not required under Chapter 62, Code of Criminal Procedure, as added by Chapter 668, Acts of the 75th Legislature, Regular Session, 1997, to register for life as a sex offender; or

(B) was not a person who under Chapter 62 had a reportable conviction or adjudication for an offense under this section; and

(2) the victim was a child of 14 years of age or older.

(f) An offense under this section is a felony of the second degree.